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(The Memorandum Opinion of the Court reads as follows:)

The United States Government, through the Department of Justice, has commenced an investigation of alleged world wide arrangements, by twenty-one oil companies, to determine if there is a possible violation of the Sherman Antitrust Laws. A broad subpoena duces tecum served on the companies and calling for millions of documents, located in the United States and abroad, has been challenged. Previously, rather than quash the subpoena in toto, this court in a memorandum opinion modified the demand for documents in several respects. In its decision, this court also reserved its views as to the production, or inspection, of papers located in foreign jurisdictions and/or subject to foreign laws, pending the movants showing:

(a) A good faith endeavor to gain consent from the foreign sovereign to remove the required documents;

(b) What, if any, interest the foreign sovereign has in the movant corporation, or in the investigation; and

(c) Proof of the foreign law.

The court advised the movants that they were to proceed on this point by December 8, 1952, otherwise the court would assume they were able to comply without difficulty. By the end of the day, on that date, six companies, viz., Standard Oil Company of New Jersey, Anglo-Iranian Oil Company, Ltd., The Texas Company, Standard Oil Company of California, Standard Vacuum Oil Company, Socony Vacuum Oil Company, Inc., had filed notice of their inability to produce the documents, or copies, located in foreign countries. This was the posture of the case prior to the present hearings.

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY CEC DATE 7-6-81
or XDS EXT. DATE
TS AUTH. REASON(S)
ENDORSE EXISTING MARKINGS
DECLASSIFIED RELEASABLE
RELEASE DENIED

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The court is now prepared to make findings of fact and conclusions of law on the motion by Anglo-Iranian Oil Company, Ltd.

Anglo-Iranian Oil Company, Ltd., is a British Company, whose headquarters are located in London. It has offices in other parts of the world, including an office at 610 Fifth Avenue, New York City, New York, where the present subpoena duces tecum was served. A general appearance was entered by counsel for that company.

Although the British Government has a capital investment of approximately 35% of the total capital, it dominates the ownership of the "ordinary shares" which carry with them the greater portion of voting rights and thus controls the company.

Counsel for the company have presented several arguments in support of its position. However, this court need only make reference to one.

In the course of argument, specifically on November 7, 1952, counsel for the company read a letter in open court, dated October 9, 1952, addressed to the Company's Directors and allegedly from Honorable Geoffrey Lloyd, Great Britain's Minister of Fuel and Power. The letter was in the form of a directive and in pointed terms ordered the company officials "not to produce any documents which were not in the United States of America and which do not relate to business in the United States, without in either case, the authority of Her Majesty's Government".

Initially, this court voiced concern with the authenticity of the particular document, in that representations by foreign sovereigns are best accepted for local court proceedings when presented either

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through the executive branch devoted to our international relationships, or by direct presentation to the court from a duly qualified representative of the foreign power. The state of the document was further put in issue when the Special Assistant to the Attorney General contended that the directive to the officers of the Anglo-Iranian Oil Company was not an act of the British Government.

The diversity of views prompted this court to write a letter dated November 26, 1952, to the Secretary of State asking:

> " * * * that it be advised, in writing, and through the proper diplomatic channels, if these documents are properly authenticated, embrace a claim of sovereignty and have the official approval of Her Britannic Majesty's Government."

On December 5, 1952, the Department of State, through an official of their legal branch, delivered to the court a note from the Honorable Anthony Eden, which reads as follows:

> Foreign Office
> S.W. 1.
>
> "I, the Right Honourable Anthony Eden, Member of Parliament, Her Majesty's Principal Secretary of State for Foreign Affairs hereby certify that the letter dated 2nd October and addressed to the Anglo-Iranian Oil Company was signed by The Right Honourable Geoffrey Lloyd, Member of Parliament, in his capacity as Minister of Fuel and Power in Her Majesty's Government in the United Kingdom, and was issued with the official approval and under the full authority of Her Majesty's Government in the United Kingdom. This letter from the Minister of Fuel and Power embraced a claim of sovereignty in that it was addressed to British subjects and organisations by Her Majesty's Government in the exercise of their Governmental authority and in the British public interest, including the economic, strategic and political interests of Her Majesty's Government.
>
> (signed) Anthony Eden

5th December 1952"

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Also filed in the cause and properly certified under Title 18, Section 3494 and Title 28, Section 1741 of the United States Code are foreign documents signifying Great Britain's interest and relationship with the Anglo-Iranian Oil Company.

Courts take judicial notice of the sovereign character of a party and in case of doubt address their own inquiries to the executive. Republic of China v. Pang Tsu How, 101 F. Supp. 646 (1951). A foreign sovereign is immune from suit, without its consent, in courts of the United States. The Exchange v. M'Faddon Cranch 116; L'Invincible 1 Wheat. 238; Exparte Muir, 254 U.S. 522, Hannes v. Kingdom of Roumania Monopolies Institute, 6 N.Y. S. 2nd. 960 and 20 N.Y. 2d. 825; Mexico v. Hoffman, 324 U.S. 30. The foreign government may adopt the procedure of asking the State Department to allow immunity or they may also present their claim of immunity by appearance in the matter. Republic of Mexico v. Hoffman, supra. Both English and American Courts have held that a sovereign need not affirmatively assert this immunity. Cardashian v. Snyder, et al., 57 Washington Law Reporter (1929) 738. Mighell v. Sultan of Johore, (1894) 1 Q.B. 149; Nankivel v. Ousk All Russian Government, et al. 237 N.Y. 150, 142 N.E. 569; Mason v. Inter-colonial Ry. of Canada, 197 Mass. 349, 83 N.E. 876; Puente v. Spanish Nat'l. State, (1940) 116 F. (2) 43. Foreign governments have been held immune from suits even though they had never been recognized by the Government of the United States. Wulfsohn v. Russian Socialist Federated Soviet Republic, 234 N.Y. 372; 138 N.E. 24; Nankivel v. Ousk All Russian Government, et al., supra. Where the political branch of the government declines to assert an opinion as to the status of a foreign sovereign, involved in a legal

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requisites of immunity exist. Republic of Mexico v. Hoffman, supra.

The first issue is whether the corporate entity involved in the Anglo-Iranian Oil Company is of such a character as to be recognized as a unit of the British Government. Under the circumstances at hand this would also require an observation to be made to the relationship existing between the corporate-agent and the Foreign Sovereign's governmental functions and duties.

In determining whether or not a given corporation is an instrumentality of its government it is not material whether the government owns all the stock, Smith v. Kansas City Title & Trust Co., 255 U.S. 180; none of the stock, Farmers & Mechanics National Bank v. Dearing, 232 U.S. 516, or only a part of the stock, McCulloch v. Maryland, 4 Wheat. 316; Osborn v. Bank, 9 Wheat. 738. The British Government, although having only slightly better than one-third of the capital investment of Anglo-Iranian, controls the corporation by reason of its ownership of the greater portion of the voting stock. However, of far more potency is the object and purpose of the corporation. Anglo-Iranian came into being as the result of an agreement between Anglo-Persian Oil Company, Ltd., and the British Government in the year 1914. The latter acquired its interest in this company to insure a proper supply of petroleum, crude oil and other products for the British Fleet. In the agreement drawn up with the Anglo-Persian Oil Company there appears the following clause:

> "Paragraph 13. A large consumer like the Admiralty, with the national interest of naval defense in its keeping, cannot, however place itself in a position of dependence for vital supplies upon a few large companies whose interests are necessarily cosmopolitan and financial, * * * It is important

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> and essential in naval interests to secure that at least one large British Oil Company shall be maintained, having independent control of considerable supplies of natural petroleum, and bound to the Government by financial and contractual obligations * * * "

Britain's Navy, in past wars, has proved itself to be one of the island-kingdom's main bulwarks of defense against aggression. The supplying of oil to insure the maintenance and operation of a naval force--and in this day and age, an air force--is certainly a fundamental government function serving a public purpose. See Berizzi Bros. v. The Pesaro, 271 U.S. 562 (1926).

This court notes that one of Great Britain's contentions before the International Court of Justice in 1951, with regard to the Iranian Oil disputes, was that the agreement of 1933 between Iran and the Anglo-Iranian Oil Company was in effect a treaty or convention between two sovereign states and therefore the International Court of Justice did have jurisdiction over the controversy. (underlining supplied)

This court is of the impression that the corporation, Anglo-Iranian Oil Company, is indistinguishable from the Government of Great Britain. Dexter & Carpentor v. Kunglig Jarnvagsstyrelsen, (1930) 43 F. (2) 705 (Since the corporation and the Government of Sweden are one and the same, immunity should be granted); Bradford v. Dir. Gen. of Railroads of Mexico (1925) 278 S. W. 251. (Since the railroad is operated by agency of government, suit is against the state itself); Mason v. Inter-colonial Ry. of Canada (1908) 197 Mass. 349, 83 N.E. 876 (Suit in virtually against the sovereign of a foreign country); and In Matter of Schumck, 293 N. Y.

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264 (1944) 56 N. E. (2) 577, the court allowed a Mexican corporation, operating an expropriated oil field, to exercise the right of a friendly sovereign and held it was "immune" from suit in the United States.

To cite a foreign sovereign into an American Court for any complaint against him in his public capacity is contrary to the law of nations. DeHaber v. Queen of Portugal, 17 Q.B. 171. All the reasons for immunity which are the basis of the doctrine in international law as incorporated into our law exist herein. There is the same necessity for reciprocal rights of immunity, the same feelings of injured pride if jurisdiction is sought to be exercised, the same risk of belligerent action if government property is subsequently seized or injured. Government of the Republic of Spain and S.S. "Arant zazu Mendi", (1939) App. Cases (England) 256, 265.

The consequences of a successful prosecution of Anglo-Iranian here would in reality be to charge and find the British Government guilty of violating a law of the United States, which imposes criminal penalties.

This court has compared United States v. Deutschas Kalisyndikat Gesellschaft 31 F. (2) 199 where it was held a suit by the United States Government to enjoin violations of antitrust laws was maintainable against a corporation organized under general corporation law of France and in which France owned eleven-fifteenths of the capital stock. However, the French Government was involved in a commercial venture, entirely divorced from any governmental

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function. There is a vast distinction between a seafaring island-nation maintaining a constant supply of maritime fuel and a government seeking additional revenue in the American markets and causing a direct injury in the United States to our domestic commercial structure.

The English Government has expressed its position in this matter in a note signed by the Honorable Anthony Eden, Her Majesty's principal Secretary of State for Foreign Affairs, and in a letter signed by the Honorable Geoffrey Lloyd, Minister of Fuel and Power, which passed through the State Department without comment or instructions; the purport of both writings is a clear and positive indication that Great Britain is seeking full protection of her interests, embraces a claim of sovereignty and asserts her privilege of immunity. The significance is unmistakable. In argument both sides have agreed that the interpretation of the correspondence is a judicial function and does not depend for finality upon advice or interpretation from the executive. Accordingly, sovereign immunity is extended to Anglo-Iranian and the subpoena served upon this company is quashed.

Counsel will prepare an appropriate order.

JAMES R. KIRKLAND
Judge

Dated: December 16, 1952.

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